In the High Court of Punjab and Haryana at Chandigarh

…

RSA No.2640 of 2004

Date of decision: 17.9.2007

Balbir Chand ... Appellant

Versus

National Buildings Construction Corporation
and another .Respondent

Coram: **Hon'ble Mr.Justice Rajesh Bindal**

Present: Mr.Chetan Mittal,Advocate
for the appellant.
Mr.A.R.Takkar,Advocate
and Mr.B.S.Bedi,Advocate
for respondent No.1

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RAJESH BINDAL,J.

The plaintiff is in appeal before this Court against the judgment and decree passed by the lower Appellate Court, wherein that of the trial Court was partially reversed.

The appellant-plaintiff filed a suit for recovery of Rs.3 lacs against the respondent-defendant for supply of labour in the work of construction of over-bridge at Chiheru, Tehsil Phagwara during the period April to July,1993. He produced bill raised by him for supply of skilled/unskilled workmen, in terms of which a sum of Rs.1,94,900.09 was due to the appellant-plaintiff and after including interest for the delayed payment of Rs.1,05,246/-, the claim in the suit was restricted to Rs.3 lacs after relinquishing the odd amount of Rs.146.09. The trial Court relied upon the bill produced by the appellant-plaintiff and also the fact that respondents were not able to show that the appellant-plaintiff did not supply any labour for which the bill was raised, decreed the suit of the appellant-plaintiff in toto. However, before the Ist Appellate Court, on reconsideration of the material on record, it was opined that the plaintiff had failed to stand on its own legs though he was plaintiff in the suit for recovery. He had failed to produce any material on record justifying claim made by him by producing any record except

the bill raised by him, that too a photo copy. His stand was that the record being old had been destroyed by him. On the other hand, whatever record the respondent had, the same was produced and it was proved that in fact the appellant-plaintiff was entitled to a sum of Rs. 39,083/-, out of which Rs. 30,000/- has already been paid and for a balance of Rs. 9,083/-, decree was passed in favour of the appellant-plaintiff along with interest which was calculated at Rs. 3270/-.

Before this court, the stand of the counsel for the appellant is that the respondents having failed to produce any material before the court which was in their possession, to justify the stand taken by them in the written statement, adverse inference be drawn against them and the suit filed by the appellant-plaintiff be decreed in toto. However, the contention made is merit less. It was the appellant-plaintiff who had approached the court. Initial burden to prove his claim was on him. He neither produced any document to substantiate his plea nor summoned any record from the respondent-defendants which according to him was in their possession. The onus to prove the claim made by the appellant-plaintiff cannot be put on the respondent-defendants. The contention made by the appellant cannot be believed to the effect that the respondents had never disputed his claim when in fact the non-payment of the claim made by the respondents for a period of three years itself shows that the claim made by the appellant was being disputed. Further the statement made by the appellant that he has not brought any record and in fact the record for any work is maintained only for two years, certainly goes against him as a person whose claim has not been settled by the respondents cannot possibly be accepted not to produce the record in his possession or destroy the record which would substantiate his plea for recovery.

For the reasons stated above, I do not find any merit in the present appeal and the same is dismissed in limine.

September 17,2007 (Rajesh Bindal)
nk Judge